

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 5/17/2016

\_\_\_\_\_  
THOMAS ESTLER, BLAKE RUEHRWEIN, :  
and STEVEN PARK, on behalf of themselves :  
and all others similarly situated, :

Plaintiffs, :

v. :

DUNKIN BRANDS INC., DUNKIN' :  
DONUTS STORE #350125, DUNKIN' :  
DONUTS STORE #350126, DUNKIN' :  
DONUTS STORE #350127, DUNKIN' :  
DONUTS STORE #345768, and :  
JOHN DOES 1-500, :

Defendants. :  
\_\_\_\_\_ :

CIVIL NO.: 1:16-cv-00932-LGS  
Judge Lorna G. Schofield

**CIVIL CASE MANAGEMENT PLAN**  
**AND SCHEDULING ORDER**

LORNA G. SCHOFIELD, United States District Judge:

This Civil Case Management Plan is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties [consent \_\_\_\_/ do not consent **X**] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. *[If all parties consent, the remaining paragraphs need not be completed.]*
2. The parties [have **X**/ have not \_\_\_\_] conferred pursuant to Fed. R. Civ. P. 26(f).
3. This case is governed by one of the following sets of rules and the parties' proposed dates in this order have been adjusted accordingly.
  - a. An employment case governed by the Initial Discovery Protocols for Employment cases? [http://www.nysd.uscourts.gov/cases/show.php?db=judge\\_info&id=713](http://www.nysd.uscourts.gov/cases/show.php?db=judge_info&id=713).  
[Yes \_\_\_\_/ No **X**]

b. A § 1983 case governed by the Plan for Certain § 1983 Cases Against the City of New York?  
<http://www.nysd.uscourts.gov/rules/1983%20Revised%20Plan%20and%20Exhibits.11.22.2013.pdf>. [Yes \_\_\_\_/ No **X**]

c. A patent case subject to the Local Patent Rules?  
[http://www.nysd.uscourts.gov/rules/Standing\\_Order\\_In\\_re\\_Local\\_Patent\\_Rules.pdf](http://www.nysd.uscourts.gov/rules/Standing_Order_In_re_Local_Patent_Rules.pdf). [Yes \_\_\_\_/ No **X**]

4. Alternative Dispute Resolution/Settlement

a. Settlement discussions [have \_\_\_\_/ have not **X**] taken place.

b. Counsel for the parties have discussed an informal exchange of information in aid of early settlement and have agreed to exchange the following:

**The parties have not agreed on an early exchange of information.**

c. Counsel for the parties have discussed the use of the following alternate dispute resolution mechanisms for use in this case: (i) a settlement conference before a Magistrate Judge; (ii) participation in the District's Mediation Program; and (iii) retention of a private mediator. Counsel for the parties propose the following alternate dispute resolution mechanism for this case:

**The parties propose a settlement conference before a Magistrate Judge.**

d. Counsel for the parties recommend that the alternate dispute resolution mechanism designated in paragraph 4(c) be employed at the following point in the case (*e.g.*, within the next 60 days; after the deposition of plaintiff is completed (specify date); after the close of fact discovery):

**Plaintiffs propose a settlement conference before a Magistrate Judge be conducted within the next 30 days. Defendants Dunkin' Brands and Dunkin' Donuts Stores # 350125, #350126, and #350127 propose that a settlement conference before a Magistrate Judge be conducted 30 days after the close of expert discovery, if any. If there is no expert discovery, these defendants propose a settlement conference before a Magistrate Judge 45 days after the close of fact discovery.**

e. The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.

5. No additional parties may be joined after \_\_\_\_\_ without leave of Court.

**July 30, 2016**

6. Amended pleadings may be filed without leave of Court until \_\_\_\_\_.

**July 30, 2016**

7. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be completed no later than \_\_\_\_\_. *[Within 14 days of the parties' Rule 26(f) conference, absent exceptional circumstances.]*

**May 17, 2016**

8. Fact Discovery

- a. All fact discovery shall be completed no later than \_\_\_\_\_.  
*[A period not to exceed 120 days, unless the Court finds that the case presents unique complexities or other exceptional circumstances.]*

~~**October 30, 2016, with permission of the Court**~~      **October 14, 2016**

- b. Initial requests for production of documents pursuant to Fed. R. Civ. P. 34 shall be served by \_\_\_\_\_.

**June 30, 2016**

- c. Interrogatories pursuant to Fed. R. Civ. P. 33 shall be served by \_\_\_\_\_.

**June 30, 2016**

- d. Depositions pursuant to Fed. R. Civ. P. 30, 31 shall be completed by \_\_\_\_\_.

~~**October 30, 2016, with permission of the Court**~~

- e. Requests to admit pursuant to Fed. R. Civ. P. 36 shall be served by \_\_\_\_\_.

**July 1, 2016**

- f. Any of the deadlines in paragraphs 8(b) through 8(e) may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 8(a).

9. Expert Discovery [if applicable]

- a. Anticipated types of experts if any:

**The parties may use experts for liability and/or damages.**

---

---

- b. All expert discovery shall be completed no later than \_\_\_\_\_.  
[Within 45 days from the date in paragraph 8(a), i.e., the completion of all fact discovery, absent exceptional circumstances.] Omit unless types of experts are identified.

~~December 30, 2016, with permission of the Court~~ November 29, 2016

- c. By \_\_\_\_\_ [no later than one month before the date in paragraph 8(a), i.e., the completion of all fact discovery] the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (ii) all expert discovery shall be completed by the date set forth in paragraph 9(a).

~~September 30, 2016~~ September 14, 2016

10. This case [is   X   / is not \_\_\_\_\_] to be tried to a jury.
11. Counsel for the parties have conferred and their present best estimate of the length of trial is \_\_\_\_\_.

**Two weeks.**

12. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below.
- 
- 
- 

**The parties propose discussing and setting a briefing schedule for both summary judgment and class certification at the October 31 case management conference described in 13(c) below.**

13. Status Letters and Conferences
- a. By \_\_\_\_\_ [60 days after the commencement of fact discovery], the parties shall submit a status letter, as outlined in Individual Rule IV.A.2.

~~August 5, 2016~~ July 15, 2016

- b. By \_\_\_\_\_ [14 days after the close of fact discovery] , all counsel must confer to discuss settlement and jointly advise the Court in writing whether or not they request a referral for settlement discussions as provided in Paragraph 4(c) above.

~~November 14, 2016~~ October 28, 2016

- c. On December 13, 2016 at 10:30 A.M. [usually 14 days after the close of discovery] , a case management conference shall be held. The conference will serve either as a pre-motion conference for any party seeking to file a summary judgment motion, or a scheduling conference for trial.

~~October 31, 2016~~ A status conference shall be held on November 1, 2016, at 10:30 a.m.

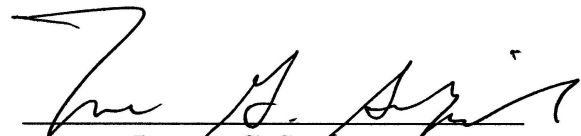
- i. A party wishing to file a summary judgment motion shall file a pre-motion letter, and any party wishing to oppose also shall file a letter at the times and in the form provided in the Court's Individual Rule III.A.1. The Court will set the briefing schedule at the conference. The Court will set a firm trial date after a decision on any summary judgment motion.
- ii. If no pre-motion letters are timely filed, at the Case Management Conference, the Court will set dates for a final pre-trial order, other pretrial submissions, a final pre-trial conference and trial. The trial date will be firm.

This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein (except as provided in paragraph 8(f)) shall be made in a written application in accordance with the Court's Individual Rules and shall be made no less than 2 business days prior to the expiration of the date sought to be extended.

The Clerk of Court is directed to enter the dates under paragraphs 5, 6, 8(a), 9(b)-(c) and 13(a)-(c) into the Court's calendar.

SO ORDERED

Dated: May 17, 2016  
New York, New York

  
LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE

Counsel for the Parties:

Carl J. Mayer  
Zachary J. Liszka  
Mayer Law Group, LLC  
1180 Avenue of the Americas  
Suite 800  
New York, NY 10036  
Tel: (212) 382-4686  
Fax: (212) 382-4687  
cyberesquire@aol.com  
zachliszka@gmail.com

Christopher G. Kelly  
Katherine A. Skeele  
Holland & Knight LLP  
31 West 52<sup>nd</sup> Street  
New York, New York 10019  
christopher.kelly@hklaw.com  
katherine.skeele@hklaw.com

Eric L. Yaffe  
Virginia E. Davis Horton  
Whitney A. Fore  
Gray Plant Mooty Mooty & Bennett, PA  
600 New Hampshire Avenue, N.W.  
Suite 700  
Washington, DC 20037  
Tel: (202) 295-2200  
Fax: (202) 295-2250  
eric.yaffe@gpmlaw.com  
virginia.horton@gpmlaw.com  
whitney.fore@gpmlaw.com